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SUBJECT: FITFUL PROGRESS: ROUND THREE OF THE AF-PAK TRANSIT
TRADE AGREEMENT NEGOTIATIONS

REF: KABUL 1802

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¶1. (U) This is a joint Embassy Kabul/Embassy Islamabad cable.

¶2. (SBU) Summary: The third round of negotiations for the Afghan-Pakistan Transit Trade Agreement (APTTA) yielded progress on some outstanding issues such as arbitration, but the atmosphere frayed over interim arrangements to expedite Afghan fruit exports to India. Despite efforts by both sides to continue to address issues with a workmanlike spirit, it became evident as the talks progressed that enthusiasm has dimmed as the remaining issues have become thornier. While negotiating sessions were limited to the two delegations, both sides spoke openly with U.S. and World Bank reps throughout the two-day session, often seeking U.S. assistance in promoting their views. Round Four is scheduled for Kabul in mid-October. End Summary.

¶3. (U) Afghan and Pakistani delegations met August 4 and 5 in Islamabad for the third round of negotiations of the Afghan-Pakistan Transit Trade Agreement (APTTA). Coming into the negotiations, both delegations characterized the text as "80 percent completed," remained upbeat on the progress as they addressed outstanding issues and appear to be building a more cooperative relationship. While excluded from the negotiating sessions, U.S. representatives, Senior Economic Advisor (Pakistan), Embassy Kabul Deputy Econ Counselor and Embassy Islamabad Econ Counselor, met repeatedly on the margins with both delegations to offer support, advice and press for progress. The next round will be held in October in Kabul, after Ramadan and before a potential second round of Afghan elections.

More Underbrush Cleared

¶4. (SBU) The two sides narrowed differences on several key areas in dispute.

-- Arbitration: The two sides came to consensus on a dispute settlement mechanism to include third-party participation in arbitration. In a compromise responding to the Afghans,

Pakistan agreed, in principle, to submitting any dispute to a WTO-inspired process. If consultations fail to produce consensus, a panel with three members will consider the issues for arbitration. One panel member will be designated by each country and those two members will select a chair by consensus. If the two members cannot agree on a chairperson, an independent organization, to be set in the agreement, will select the chair.

-- Smuggling: Pakistan insists the agreement must include measures to combat smuggling into Pakistan. In the previous round (reftel) the Afghans agreed to a study of the problem and potential responses. The two sides are finalizing joint terms of reference for the study, for which they will then seek international support to carry out. Embassies have already indicated to both parties USG readiness to assist.

-- Both parties have agreed to address transits via a combination of transport means which had previously not been included in the agreement (e.g. air; air-land; and air-land-sea). The absence of Ministry of Transport reps on the Afghan delegation limited the ability to address this development.

But Sticking Points Remain

15. (SBU) Despite intense Afghan interest to expand the discussion to include transit of Afghan goods up to and across the Indian border, the GOP maintained its position that transit to India be addressed at the political level. Afghan Head of Delegation Farhadi told U.S. observers that,

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given the difficulties in creating a special regime for Afghan fruit (details below), he believed the Pakistani position has hardened on the question of transit to India.

-- Smuggling: The Afghans still prefer to conclude the new APTTA while the study is ongoing while the Pakistanis regard the conclusions of the study as necessary for reaching a satisfactory arrangement.

-- Independent annual evaluation of the agreement's implementation is important to the Afghans, who want to ensure a more open logistics arrangement is not undermined. While approaches were discussed, Pakistan continues to resist taking implementation outside of a strict bilateral context they feel they can control.

-- References to Border: The two sides are struggling with how to characterize the point at which goods cross from Pakistan into Afghanistan and back, since there is a difference concerning the definition of the border: Afghans insist on using the term "legal crossing point" (Note: because they do not recognize the Durand line of control as the final word on the Af-Pak border. End Note), while the Pakistanis (who do recognize the Durand line as the legitimate border) insist on "border crossing." The two sides will continue to seek appropriate language, but have privately confided that this issue, too, will likely need to be resolved at the political level.

Special Arrangement for the 2009 Afghan Harvest

16. (SBU) The Afghan delegation continued to press for a special arrangement to get its expected bumper harvest of fruit and vegetables to India expeditiously this year. At the Kabul round in June, the Afghans requested - and the Pakistanis seemed inclined to consider favorably - the transit of Afghan fruit up to the Indian border in Afghan trucks. Despite several weeks of work by the Pakistani Ministry of Commerce to coordinate GOP approval of the Afghan

request, Secretary Commerce Suleiman Ghani told Econ Counselor and visiting SCA/Pakistan Senior Economic Advisor August 3 that he has not yet secured all the interagency clearances necessary to bring the issue to the Economic Affairs Division of the Cabinet for a decision. He mentioned MFA and the Interior Ministry as the two holdouts; the Ministry of Agriculture, Ghani said, would not object.

¶7. (SBU) To break the deadlock, Commerce officials offered an interim measure that did not require Cabinet approval: to make Torkham a "one-stop shop" for the inspection and transfer of Afghan goods from Afghan to Pakistani trucks (Note: Currently, two inspections are required: one at Torkham, and a second at Peshawar where Afghan goods are also off-loaded onto Pakistani trucks. End Note). While the Afghans understood the Pakistani offer to be a second option for truckers and happily accepted the deal, when details of the arrangement were presented in writing, it became clear that the GOP had instead replaced the old system with the new, eliminating any option for Afghan truckers to choose between Torkham and Peshawar. Citing the limited facilities at Torkham, the Afghans asked that the new arrangement be withdrawn in favor of the existing, transfer-goods-at-Peshawar system. Although the Pakistanis eventually agreed to revert to the original system, the contentious back and forth caused by the misunderstanding generated significant ill will.

World Bank Concerns and Plans

¶8. (SBU) World Bank trade and transportation expert Amer

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Durrani expressed concern with elements of the text, such as a trucking permit quota arrangement that he asserted would keep the transport sector non-competitive or the definition of the word "vessel," on which the two sides had already agreed. In a side meeting with U.S. observers, Durrani stressed the need for legal expertise to assist the two sides in interpreting some of the legal concepts with which they are wrestling. The absence of observers to highlight trouble spots in the talks themselves, Durrani said, could result in a less than optimal agreement. To help address the issue, Durrani solicited USG support to convene a conference involving academics, businesses and industry stakeholders to better inform the negotiators of the needs of the sector. Both the Afghans and Pakistanis have tentatively agreed to this concept, though no definite plans have been formalized.

¶9. (SBU) Comment: While continuing to make progress on technical language, it became evident as the talks progressed that enthusiasm has dimmed as the remaining issues have become thornier. Furthermore, the advent of Afghan elections and Ramadan have dashed hopes the negotiations would conclude in September. Most importantly, it will be necessary to ensure as the process continues that any agreement the two sides reach does in fact result in more expedited, competitive transit. Despite Ghani's confidence that the GOP is "likely to agree" to allow Afghan trucks to carry Afghan goods in Pakistan as a part of any agreement, the Afghans remain skeptical that the GOP will indeed open up the transport sector sufficiently to allow for opportunities for Afghan logistics companies. Secretary General to the President Salman Farooqi told Islamabad Deputy Econ Counselor and visiting Senior Economic Advisor (Pakistan) August 7 that President Zardari had agreed to sign the MOU on transit trade in May despite intense criticism from opposition parties who see the agreement as benefiting India. End Comment.
FEIERSTEIN